

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

C.R.M., INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
AGENCY,

Respondent.

PCHB No. 90-29

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This is an appeal of Notice and Order of Civil Penalty (No. 7105) for allegedly causing or allowing an outdoor fire containing prohibited materials. The Pollution Control Hearings Board held a formal hearing on July 27, 1990, in Lacey, Washington. Present was Member Harold S. Zimmerman, presiding, Board Chair Judith A. Bendor has reviewed the record.

Appellant appeared pro se by William Poppie, project manager for C.R.M., Inc. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) was represented by its attorney Keith D. McGoffin. The proceedings were recorded by Kathryn A. Beehler, reporter for Gene Barker and Associates.

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was made. From the testimony, exhibits, and argument, the Board makes these:

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 90-29

1 FINDINGS OF FACT

2 I

3 While driving on the Maple Valley Road, on November 20, 1989, at  
4 about 11:50 a.m., an inspector for the Puget Sound Air Pollution  
5 Control Agency saw an outdoor fire with a black smoke plume, coming  
6 from the area of a new housing development. The fire contained  
7 treated wood, plastic drain pipe, and paint cans among the debris  
8 being burned.

9 After some time, the inspector found a backhoe operator for  
10 C.R.M., Inc. who accepted responsibility. The inspector informed the  
11 operator that the fire was illegal, because the operation was not  
12 residential or land clearing, and the fire contained other than  
13 natural vegetation. The operator extinguished the fire with his  
14 equipment.

15 III

16 The inspector issued to CRM a Notice of Violation 26381, citing  
17 Regulation I, Section 8.02(a)(2) & (4).

18 Notice and Order of Civil Penalty (No. 7105) in the amount of  
19 \$1,000 was issued January 22, 1990 to C.R.M. It only alleged  
20 violation of Section 8.02(a), for burning unlawful material.

21 IV

22 This is C.R.M.'s first violation of PSAPCA rules. They have been  
23 in the business of subdivision development for five to six years.  
24 They knew they should not have been burning paint. The employee  
25 conducting the burning is no longer working for C.R.M.

V

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these persons and these matters. Chapters 43.21B and 70.94 RCW.

II

RCW 70.94.70 states in pertinent part:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control.

RCW 70.94.775 states in pertinent part:

No person shall cause or allow any outdoor fire:

(1) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which emits dense smoke or obnoxious odors. . . .

III

At the time of the event in question, Section 8.02(a)(2) of PSAPCA Regulation I, stated in pertinent part:

It shall be unlawful for any person to cause or allow any outdoor fire: . . .

(2) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products,

plastics, or any substance other than natural vegetation which emits dense smoke or obnoxious odors. . . . (see Finding of Fact I)

IV

We conclude that the fire burned on November 20, 1989, violated Regulation I, Section 8.02(a)(2) and RCW 70.94.775 because it contained prohibited materials. We further conclude that C.R.M., Inc., is legally responsible for the acts of its workers.

## V

The amount of the fine depends upon several factors, including the severity of the offense, whether there have been past violations, and so forth. CRM has no previous violations. On the other hand, it is experienced in the business and apparently exercised inadequate supervision. We conclude that a fine of \$1,000 should be reduced to \$750, with \$375 due and \$375 suspended for a period of two years provided there are no unexcused air pollution violations.

## VI

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this:

ORDER

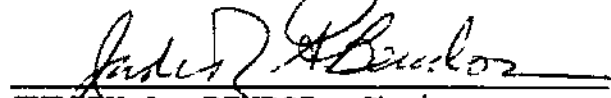
The violation of Section 8.02(a)(2) is AFFIRMED as to liability.  
The \$1,000 penalty is REDUCED to \$750, with \$375 due and \$375  
SUSPENDED provided that C.R.M., Inc. has no violations of air  
pollution laws for two years.

DONE this 24<sup>th</sup> day of September, 1990.

POLLUTION CONTROL HEARINGS BOARD



HAROLD S. ZIMMERMAN, Presiding



JUDITH A. BENDOR, Chair

00488